

CHAPTER 9

ADMINISTRATION

9-9-1 ADMINISTRATIVE PROCEDURES

(a) GENERAL

The City Council shall provide for the manner in which the provisions of this Ordinance shall be determined, established and enforced, and from time to time amended, supplemented, or changed. A Board within the context of this Ordinance shall mean any board, commission, or agency empowered therein.

(b) NOTICE

(1) Zoning Map Amendment, Special Use Permit, Conditional Zoning District, Major Amendment to Special Use Permit or Conditional Zoning District, Application for the Establishment of Vested Rights, Variance, and Special Exception Requests:

- a. Except in the case of a comprehensive map amendment of all property within the city where notice is given in accordance with NCGS 160-A384, whenever there is a request for a Zoning Map Amendment, Special Use Permit or Conditional Zoning District involving a parcel of land, the owner(s) of that parcel of land and the owner(s) of all parcels of land wholly or partially within three hundred (300) feet thereof, shall be mailed a notice of the public hearing on the proposed request.
- b. Whenever there is a request for the Establishment of Vested Rights, Variance, or Special Exception, involving a parcel of land, the owner(s) of that parcel and the owner(s) of all parcels of land wholly or partially within one hundred (100) feet thereof, shall be mailed a notice of the hearing on the proposed request.
- c. Mailed notice shall be given to the owners of land as shown on the county tax listing by first class mail and to the last address listed on the county tax abstracts for such owners.
- d. The person or persons mailing such notices for Zoning Map Amendments, Conditional Zoning Districts, Special Use Permits, or Major Amendments thereto shall certify to the City Council that proper notice has been given. Such certification shall be deemed conclusive in the absence of fraud.
- e. Notice of such proposed action shall also be published in a newspaper of general circulation in accordance with North Carolina General Statutes.
- f. Each site shall be posted in a conspicuous location(s) with notice of the request that contains public hearing information or how to obtain public hearing

information. Posting shall not be required in the case of comprehensive map amendment, except as provided for in NCGS 160A-384

- (2) Street Name Change Requests: In the case of a street name change request, all the owners of properties, as listed on the county tax abstract, fronting or abutting the street or segment affected by the request, shall be given first class mailed notice of the request and public hearing. The City shall also make a good faith effort to notify renters of property affected. If the street name change is approved, the owners of properties affected shall be sent address change notices containing the effective date of change.
- (3) Text Amendment and Administrative Appeal: Whenever there is a request for an action involving a text amendment to this Ordinance or an appeal of an interpretation of this Ordinance, a notice of such proposed action shall be published in a newspaper of general circulation in accordance with NCGS 160A-364.
- (4) Amendments to Previously Approved Planned Unit Developments: In addition to the notification procedures for rezoning applications specified in this Section, notification by first-class mail shall be provided, by the applicant to rezone any portion of a previously approved Planned Unit Development, to any owner of any parcel in the Planned Unit Development. The timing of said notification shall be in accordance with the notification requirements in Subsection 9-9-1(b)(1) above for rezoning applications. The required notification may be satisfied by notifying any property owners association within the Planned Unit Development, in lieu of notification to individual owners of parcels. The rezoning applicant shall certify to City Council that this required notification has been provided.
- (5) Board Meetings: Whenever there is a request for an action requiring a Board approval under this Ordinance, public notice shall be given in accordance with NCGS Chapter 143, Article 33C (Meetings of Public Bodies).

(c) **ORGANIZATION**

The City Council shall require that each of the Boards provided for by this Ordinance adopt rules and maintain records.

- (1) Rules of Conduct: Each Board shall adopt rules necessary to conduct its affairs and to establish Board organization, committees, procedures, meeting notice, and meeting conduct.
- (2) Conformance of Rules: Such rules adopted by the Board shall be in accordance with state law and the provisions of this Ordinance.
- (3) Election and Terms of Officers: Unless otherwise provided by Ordinance, a Chairman and Vice Chairman of the Board shall be elected by members of the Board. The Secretary does not have to be a member of the Board. The term of office for all elected officers shall commence on July 1 of the calendar year.

- (4) Special Committees: The Board may from time to time establish special committees to assist it in studying specific questions and problems. The membership of such committees is not limited to Board members. The Board may not delegate to any such committee its official powers and duties.
- (5) Record of Meetings: The Board shall keep minutes of its proceedings, showing the vote of each member upon every action or, if absent or failing to vote, indicate such fact. The Board shall also keep records of its examinations and other official actions. All such records and minutes shall be public record.

(d) ALTERNATE MEMBERS

- (1) Inclusion of Alternates: The City Council may appoint alternate members to serve in the absence or temporary disqualification of regular members.
- (2) Powers and Duties: Each alternate member, attending a meeting of the Board and serving in the absence of a regular member, has and may exercise all the powers and duties of a regular member.

(e) TERMS

- (1) Length of Terms: Regular members and alternate members of the Board shall serve a term of three (3) years, or until successors are appointed, provided that upon initial appointment the terms of office may be staggered. The terms of all Board members shall not expire at the same time.
- (2) Maximum Consecutive Terms: Regular members shall not serve more than two (2) consecutive terms.
- (3) Filling of Vacancies: Vacancies created by resignation or other causes shall be filled by a new member or an alternate member appointed to serve for the remainder of the unexpired term.

(f) ABSENCE AND ATTENDANCE

It shall be the duty of all Planning and Zoning Commission, Historic Preservation Commission and Board of Adjustment members to inform the Planning and Development Department of any anticipated absence and notification shall be immediately after receipt of the agenda. A regular member who misses three (3) consecutive regular meetings or 33% or more of the regular meetings in a calendar year loses his status as a voting member of the Board until reinstated or replaced by the City Council, or the Guilford County Board of Commissioners if an extraterritorial member. Absences due to sickness, death in the family, or other emergencies of like nature shall be regarded as approved absences and shall not affect the member's status on the Board; except, that in the event of a long illness or other such case resulting in a prolonged absence, the member may be replaced.

(g) COMPENSATION

Compensation for Board members may be provided for by the City Council.

(Ord. No. 93-113, Pt. 1 (§ 1), 12-13-93; Ord. No. 99-75, Pt. 14, (§ 1), 11-4-99; Ord. No. 01-39, Pt. 1 & 2, (§ 1), 6-7-01; Ord. No. 02-90, Pt. 4, (§1), 10-17-02; Ord. No. 04-76, Pt. 3, §1), 10-21-04))

9-9-2 THE PLANNING AND ZONING COMMISSION**(a) AUTHORITY**

A planning agency known as the Planning and Zoning Commission is hereby established pursuant to NCGS 160A-361

(b) MEMBERSHIP

- (1) The Planning and Zoning Commission shall consist of nine (9) members. Eight (8) members shall be citizens and residents of the City of High Point and shall be appointed by the City Council. One (1) member shall be a citizen and resident of the extraterritorial jurisdiction and shall be appointed by the Guilford County Board of Commissioners in accordance with NCGS 160A-362. The extraterritorial member shall have the same rights, privileges and duties as the other members of the Commission and may vote on all matters coming before the Commission.
- (2) If a member of the Commission moves outside the zoning jurisdiction, or the extraterritorial member moves outside the extraterritorial area, that shall constitute a resignation from the Commission effective upon the date a replacement is appointed.

(c) OFFICERS

The Chairman and Vice Chairman shall be elected by the members of the Commission for a one (1) year term of office. A subsequent term of office by the same Commission member shall not be permitted for a period of one (1) year.

(d) POWERS AND DUTIES

The Planning and Zoning Commission shall have the following powers and duties:

- (1) To hear and make recommendations on matters to the City Council in accordance with the terms of this Ordinance, such as Zoning Map Amendments, Conditional Zoning Districts, Special Use Permits, Text Amendments, Applications for the Establishment of Vested Rights, and Street Closings.
- (2) To hear and decide street name changes, streets not heretofore named (where necessary), and street names proposed by owners of property or developments;

- (3) To hear and make recommendations on appeals from the Enforcement Officer with regard to soil erosion and sedimentation control plans.
- (4) To develop a comprehensive plan for the territory under its jurisdiction, subject to specific direction from the City Council;
- (5) To make such other studies and plans and to review such other related matters as directed by the City Council; and
- (6) To exercise other powers and authority provided to it by the City Council, this Ordinance, or State law.

(Ord. No. 99-75, Pt. 13, (§ 1), 11-4-99;(Ord. No. 01-39, Pt. 3 (§ 1), 6-7-01)

9-9-3 TECHNICAL REVIEW COMMITTEE

(a) AUTHORITY

A planning agency known as the Technical Review Committee (TRC) is hereby established pursuant to NCGS 160A-361.

(b) MEMBERSHIP

The Technical Review Committee shall be composed of department heads, or their designated representatives, from the following departments: Planning and Development, Transportation, Public Services, Engineering Services, and Electric. Representatives from other departments such as Police, Fire, and Parks and Recreation; private utility companies; and public or private school systems may also attend. A subcommittee of the Technical Review Committee composed of department heads, or their designated representatives, from the following departments: Planning and Development, Public Services, and Engineering Services, shall review watershed development plans and stormwater-related matters.

(c) OFFICERS

The Planning and Development Department Director or his designated representative shall serve as Chair of the Technical Review Committee.

(d) POWERS AND DUTIES

The Technical Review Committee shall have the following powers and duties:

- (1) To provide for a continuing, coordinated, and comprehensive review of the technical aspects of this Ordinance and for the approval of certain technical aspects of development proposals;

- (2) To review technical aspects of development occurring within the Jurisdiction as specified by this Ordinance;
- (3) To review and approve new or revised plans including: subdivisions; clustered or attached developments; planned unit developments; office, commercial, and industrial developments; and watershed development plans; and any other proposals for development specified by this Ordinance;
- (4) To approve modifications, watershed modifications and minor watershed variances as authorized by Section 9-9-10 (Modifications) and Section 9-9-11(Watershed Variances);
- (5) To recommend to the Planning and Zoning Commission the closing of streets, alleys, or their rights-of-way;
- (6) To recommend to the City Council the closing or removal of easements, and other rights-of-way; encroachments within public rights-of-way; and the feasibility of annexation requests;
- (7) To review and recommend the sale and disposal of all City real property (not equipment);
- (8) To perform any other related duties that the City Manager may direct; and
- (9) To exercise other powers and authority provided to it by the City Council, this Ordinance, or State law.

(Ord. No. 93-113, Pt. 2(§ 1), 9-16-93; Ord. No. 93-113, Pt. 1(§ 1), 12-13-93; Ord. No. 04-76, Pt. 4 (§1), 10-21-04)

9-9-4 RESERVED

(Ord. No. 99-83, Pt. 4, § 1, 11-4-99; Ord. No. 04-76, Pt. 5, (§1), 10-21-04)

9-9-5 HISTORIC PRESERVATION COMMISSION

(a) AUTHORITY

A Historic Preservation Commission is hereby established, pursuant to NCGS 160A-400. Nothing in this Ordinance shall affect the validity of the Guilford County Joint Historic Properties Commission.

(b) MEMBERSHIP

- (1) Number of Members: The Historic Preservation Commission shall be composed of at least nine (9) members who shall reside within the territory for which the City exercises jurisdiction.

- (2) Qualifications: Members shall have demonstrated experience or an interest in historic preservation, and should, to the extent such persons are available in the community and willing to serve, be from the disciplines of architecture, history, architectural history, planning, archaeology, or other related discipline.

(c) **POWERS AND DUTIES**

The Historic Preservation Commission shall have the following powers and duties:

- (1) To recommend to the City Council areas to be designated by ordinance as "Historic Districts" and individual structures, buildings, sites areas, or objects to be designated by ordinance as "Landmarks";
- (2) To undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;
- (3) To grant or deny the issuance of a Certificate of Appropriateness in accordance with this Ordinance. The Commission may hold public hearings on the issuance or revocation of such Certificates;
- (4) To make recommendations to the Planning and Zoning Commission concerning requests for Zoning Map Amendments or Special Use Permits affecting historic properties or districts; and to make recommendations to the Board of Adjustment concerning variances and special exceptions affecting historic properties or districts;
- (5) To recommend appropriate changes to this Ordinance which relate to historic districts or which relate to the preservation of historic structures, landmarks, or areas within the jurisdiction;
- (6) To acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established historic districts or to any such properties designated as landmarks, to hold, manage, preserve, restore, and improve the same, and to exchange or dispose of the property by public or private sale, lease, or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;
- (7) To restore, preserve, and operate historic properties;
- (8) To recommend to the City Council that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;
- (9) To conduct an educational program with respect to historic properties and districts within the jurisdiction;

- (10) To prepare and recommend the official adoption of a preservation element as part of the City's comprehensive plan;
- (11) To negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate;
- (12) To cooperate with the state, federal, and local governments, in pursuance of the purposes of Subsection 9-1-3(f) (Historic District Overlay Purposes). The City Council or the Historic Preservation Commission when authorized by the City Council, may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law;
- (13) To enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the Historic Preservation Commission may enter any private building or structure without the express consent of the owner or occupant thereof;
- (14) To review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alterations or demolition of designated landmarks, pursuant to this Section; and
- (15) To exercise other powers and authority provided to it by the City Council, this Ordinance, and State law.

(Ord No. 01-14, Pt. 21, (§1), 4-5-01)

9-9-6 BOARD OF ADJUSTMENT

(a) AUTHORITY

A Board of Adjustment is hereby established pursuant to NCGS 160A-388.

(b) MEMBERSHIP

The Board of Adjustment shall consist of at least five (5) members and may have at least four (4) alternate members. Extraterritorial members shall be appointed and shall function in accordance with NCGS 160A-362.

(c) POWERS AND DUTIES

The Board of Adjustment shall have the following powers and duties:

- (1) To hear and decide appeals from and review any zoning order, requirement, decision, determination, or interpretation made by an Enforcement Officer charged with enforcing this Ordinance;

- (2) To review appeals from the proceedings of the Historic Preservation Commission concerning the issuance of a Certificate of Appropriateness, limited to certiorari;
- (3) To hear and decide requests for special exceptions which are specifically delegated to it by this Ordinance;
- (4) To vary and modify application of zoning regulations in harmony with their general purpose and intent and in accordance with general and specific rules contained therein;
- (5) To hear and decide requests for variances from the zoning provisions of this Ordinance in cases where special conditions would make strict and literal interpretation and enforcement of the zoning provisions of this Ordinance result in a loss of privileges shared by other properties within the same zoning district;
- (6) To interpret zoning maps and pass upon disputed questions of district boundary lines and similar questions as they arise in the administration of the Ordinance;
- (7) To hear and decide all matters referred to it or upon which it is required to pass under this Ordinance; and
- (8) To hear and decide appeals from and review any order, requirement, decision, determination, or interpretation made by the Enforcement Officer with regard to Title 9, Chapter 6, Article E (Minimum Housing Code) provisions.

(d) OATHS

The Chairman of the Board, or any member temporarily acting as Chairman, shall administer oaths to witnesses in any matter coming before the Board.

(e) VOTING

- (1) Required Vote for Approval: A concurring vote of four-fifths of the members shall be required.
- (2) Vote of the Chairman: The Board chairman shall vote as any other Board member.
- (3) Continuance: The Board may continue the public hearing or delay voting on any matter to a subsequent meeting upon showing of good cause.
- (4) Vote of Extraterritorial Members: An extraterritorial member shall vote on all matters as any other Board member. At least one extraterritorial member shall be required to vote on all requests regarding property located within the city's extraterritorial jurisdiction.
- (5) Vacant Position: Any vacant position on the board and members who are disqualified from voting shall not be considered members of the board for

calculation of the requisite supermajority if there are no qualified alternate members.

(f) CONFLICT OF INTEREST

A member of the board shall not participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker; which include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall by majority vote rule on the objection.

(g) NOTICE OF DECISION

The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(h) COURT REVIEW

- (1) Appeal to Superior Court: Every decision of the Board shall be subject to Superior Court review by proceedings in the nature of certiorari.
- (2) Timing of Appeal: Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:
 - a. The decision of the Board is filed in the Department of Planning and Development; or
 - b. A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board at the time of its hearing of the case.

(i) APPEALS TO THE BOARD

- (1) Appeal Eligibility: Any person aggrieved or any officer, department, or board of the City may make an appeal.
 - a. Appeals shall be made, within the time prescribed by the Board, by filing with the Officer from whom the appeal is taken and with the Board a notice of appeal, specifying the grounds thereof.

- b. The Officer from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(2) Effect of Appeal:

- a. An appeal stays all proceedings in furtherance of the action appealed from, unless the Officer from whom the appeal is taken certifies to the Board, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in the Officer's opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this Ordinance.
 - b. The filing of an appeal prevents the filing of an application for a Zoning Map Amendment or a Special Use Permit pertaining to the same property, or the filing of an application for a Text Amendment by the same person, company, organization or other entity that filed the appeal until such an appeal is decided finally by the Board of Adjustment, or if the Board's decision is appealed to the courts, by the courts.
- (3) Effect of Certification: If certification occurs in accordance with Subsection 9-9-6(i)(2) (Effect of Appeal), proceedings shall not be stayed except by a restraining order, which may be granted by the Board or by a court of competent jurisdiction, on due cause shown. The issuer of the restraining order shall notify in writing the Officer from whom the appeal is taken.
- (4) Notice of Hearing: The Board shall fix a reasonable time for hearing the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time.
- (5) Action of Board: The Board may reverse, affirm, or modify the order, requirement, decision, determination, or interpretation appealed from, and shall make any order, requirement, decision, determination or interpretation that in the Board's opinion ought to be made under the circumstances. The Board shall have all of the powers of the Officer from whom the appeal is taken.
- (6) Conditions of Rehearing: The Board shall not be required to hear an appeal or application previously denied if it finds that there has been no substantial change in conditions or circumstances bearing on the appeal or application.

(j) **VARIANCES**

- (1) Application: An application for a variance shall be submitted in writing to the Board by filing a copy of the application with the Enforcement Officer.
- (2) Procedure: The Board shall:

- a. Fix a reasonable time for holding a public hearing on the variance request;
- b. Give notice of the variance request as prescribed in Subsection 9-9-1(b) (Notice); and
- c. Decide the variance request within a reasonable time.

(3) General Requirements:

- a. The Board shall make findings of fact that the requirements of Subsection 9-9-6(j)(4) (Granting of Variance) have been met by the applicant.
- b. The Board shall not, under any circumstances, grant a variance to permit a use or density not otherwise permitted by this Ordinance in the zoning district involved.
- c. Any variance granted by the Board shall be the minimum variance that will make possible the reasonable use of the land, building, or structure.
- d. Neither the nonconforming use of lands, buildings, or structures in the same zoning district; nor the permitted use of lands, buildings, or structures in other zoning districts; nor personal circumstances shall be considered as grounds for the issuance of a variance.

(4) Granting of Variance: A variance may be granted by the Board if evidence presented by the applicant persuades it to reach each of the following conclusions:

- a. There are practical difficulties or unnecessary hardships that would result from carrying out the strict letter of this Ordinance. The Board may reach this conclusion if it finds that:
 - 1. If the applicant complies with the provisions of this Ordinance, he can make no reasonable use of his property;
 - 2. The hardship of which the applicant complains results from unique circumstances related to the applicant's property;
 - 3. The hardship results from the application of this Ordinance to the property; and
 - 4. The hardship is not the result of the applicant's own actions.
- b. The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.
- c. The granting of the variance assures the public safety and welfare and does substantial justice.

- (5) Conditions: In granting a variance, the Board may prescribe such reasonable and appropriate conditions and safeguards as will assure that the use of the property to which the variance applies will be compatible with surrounding properties and will not alter the essential character of the neighborhood.
 - a. A variance granted subject to a condition shall be permitted only so long as there is compliance with the condition.
 - b. Violations of such conditions and safeguards, when a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.
 - c. In the event that any such condition is held invalid, for any reason, such holding shall have the effect of invalidating the variance granted and shall render the variance null and void.
 - d. If a violation or invalidation of a condition of a variance occurs, the Enforcement Officer may revoke the Certificate of Compliance.
- (6) Duration: The Board may specify a time duration within which construction or installation shall commence. Unless otherwise specified, construction or installation shall be commenced within twelve (12) months of the date of issuance of a variance, or it shall become void. If construction or operation is commenced within the specified time period, the variance shall continue in force so long as the affected building or installation remains.

(k)**SPECIAL EXCEPTIONS**

- (1) Application: An application for a special exception shall be submitted in writing to the Board by filing a copy of the application with the Enforcement Officer.
- (2) Procedure: The Board shall:
 - a. Fix a reasonable time for holding a public hearing on the special exception request;
 - b. Give notice of the special exception request as prescribed in Subsection 9-9-1 (b) (Notice); and
 - c. Decide the special exception request within a reasonable time.
- (3) General Requirements:

In addition to the specific requirements listed for each special exception in this Ordinance, the Board of Adjustment shall make the following general findings in order to approve any special exception:

 - a. That the special exception, if granted, will not materially endanger the public health or safety.

- b. That the special exception meets all required standards, conditions and specifications of the Development Ordinance, including any land use development standards as listed in Chapter 5, Zoning: Other Standards; and
- c. That the special exception will not substantially injure the value of adjoining or abutting property, or that the special exception is a public necessity.

(4) Conditions and Duration:

Conditions and duration of special exceptions shall be as prescribed for variances in Section 9-9-6(j)(5) and (6).

(I) FLOOD DAMAGE PREVENTION

- (1) The Board of Adjustment shall hear and decide appeals from decisions of the Enforcement Officer and requests for variances from the requirements of the flood damage prevention provisions of this Ordinance.
- (2) Variances may be issued for:
 - a. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - b. Functionally dependent facilities, if determined to meet the definition as stated in this Ordinance, and provided provisions of 9-9-6(k)(8)b., c. and e. have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety;
 - c. Any other type of development, provided it meets the requirements of this Section;
- (3) In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Ordinance, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;

- e. The necessity to the facility of a waterfront location as defined in this Ordinance as a functionally dependent facility, where applicable;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (4) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (5) Upon consideration of the factors listed above and the purposes of this Ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this Ordinance.
- (6) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (7) The Enforcement Officer shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (8) Conditions for Variances:
- a. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

- b. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - d. Variances shall only be issued prior to development permit approval.
 - e. Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship; and
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (9) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
- a. The use serves a critical need in the community.
 - b. No feasible location exists for the use outside the Special Flood Hazard Area.
 - c. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - d. The use complies with all other applicable Federal, State and local laws.
 - e. The city of High Point has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

(Ord. No. 93-113, Pt. 2(§ 1), 9-16-93; Ord. No. 94-98, § 1, 12-15-94; Ord. No 03-15, Pt. 8, (§1) 3-20-03); Ord. No. 07-50, (§4) 6-7-07

9-9-7 URBAN FORESTRY COMMITTEE**(a) AUTHORITY**

An Urban Forestry Committee is hereby established to oversee the implementation of the city's urban forestry program, pursuant to the provisions of this Ordinance and NCGS 160A-361.

(b) MEMBERSHIP

The Urban Forestry Committee shall be composed of department heads, or their designated representative, from the following departments: Planning and Development, Public Services, Electric Utilities and Parks and Recreation. Representatives from other departments and private utility companies may also attend.

(c) OFFICERS

The Planning and Development Department Director or his designated representative shall serve as Chair of the Urban Forestry Committee.

(d) POWERS AND DUTIES

The Urban Forestry Committee shall have the following powers and duties:

- (1) Develop a comprehensive strategy for the protection, maintenance, planning, planting and removal of trees on city owned or controlled property.
- (2) Facilitate the planting, growth and protection of trees within the community.
- (3) Develop and implement programs that educate the community about proper tree planting and maintenance practices, encourage volunteer tree planting efforts, and increase public awareness and support of the community's urban forest.
- (4) Identify and recommend the removal of dead, dying, disease or insect-infested trees.
- (5) Coordinate and sponsor the city's annual observance of Arbor Day.
- (6) Develop, adopt and maintain standards and practices for the conservation and maintenance of trees on city owned or controlled property.
- (7) Develop, adopt and maintain guidelines for the planting of trees in the community, including standards and specifications for plantings on street rights-of-way and adjacent to overhead and underground utilities, preferred trees for planting along street rights-of-way, and recommended tree species that are best suited for the community's climate and conditions.

- (8) Review and approve requests to plant, prune, or remove trees on city owned or controlled property in accordance with this Ordinance and the City's adopted standards and practices.
- (9) Review the city's ordinances, codes and policies to promote the proper utilization of trees and recommend appropriate changes as necessary.
- (10) Develop and maintain an inventory of trees on city owned or controlled property.
- (11) Identify and solicit grants, loans or contributions from governmental agencies, corporations, organizations and individuals that benefit the city's urban forestry program.
- (12) Prepare an annual work program and budget for the city's urban forestry program and an annual report on the City's activities and expenditures.
- (13) Any other tasks assigned by City Council or necessary to implement the duties and responsibilities mentioned above.

(Ord. No. 04-76, Pt. 6, (§1), 10-21-04)

9-9-8 RERSEVED

(Ord. No. 02-06, Pt. 2 (§ 1) 2-7-02)

9-9-9 ENFORCEMENT OFFICER

(a) ESTABLISHMENT AND AUTHORITY

The City Council shall appoint the Enforcement Officer(s) to administer and enforce the provisions of this Ordinance. The Enforcement Officer may be provided with agents to assist in administration and enforcement as directed by the City Council.

(b) GENERAL DUTIES

The Enforcement Officer(s) shall:

- (1) Establish application procedures for permits, appeals, and actions pursuant to this Ordinance and make available forms implementing the same;
- (2) Review development plans and permits to assure that the requirements of this Ordinance have been satisfied;
- (3) Approve development plans where such duty is assigned by this Ordinance;
- (4) Issue permits and certificates pursuant to this Ordinance;

- (5) Interpret the applicability of the provisions of this Ordinance in matters where the text does not clearly provide guidance;
- (6) Maintain all records pertaining to the provisions of this Ordinance and make said records open for public inspection;
- (7) When necessary, inspect properties and activities for which permits have been issued to determine whether the use(s) is being conducted in accordance with the provisions of this Ordinance;
- (8) Investigate violations of this Ordinance;
- (9) Enforce the provisions of this Ordinance;
- (10) Issue notice of corrective action(s) when required;
- (11) Use the remedies provided in this Ordinance to gain compliance;
- (12) Receive appeals and forward same to the appropriate body;
- (13) Be authorized to gather evidence in conjunction with said duties; and
- (14) Perform other duties as may be assigned by the City Council.

(c) **FLOOD DAMAGE PREVENTION ADMINISTRATION DUTIES**

Duties And Responsibilities Of The Enforcement Officer: The Enforcement Officer shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this Ordinance have been satisfied;
- (2) Advise permittee if additional Federal or State permits (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) are required and assure that copies of such permits are provided and maintained on file with the floodplain development permit;
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of 9-7-16(e)(5) are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of 9-7-16(b)(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of 9-7-16(b)(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with 9-7-16(b)(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with 9-7-16(b)(3) and 9-7-16(e)(2)b.
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Section.
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with 9-7-16(a)(2), obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to 9-7-16(e)(3)b.2., in order to administer the provisions of this Ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with 9-7-16(a)(2), obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this Ordinance.
- (13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of Chapter 7, Article C of this Ordinance and make these records available for public inspection,

recognizing that such information may be subject to the Privacy Act of 1974, as amended.

- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Enforcement Officer shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Enforcement Officer has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of the Flood Damage Prevention regulations, the Enforcement Officer may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (17) Revoke floodplain development permits as required. The Enforcement Officer may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (18) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The Enforcement Officer and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of 9-7-16(c).
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with 9-7-16(a)(2) of this Ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

(d) WATERSHED PERFORMANCE STANDARDS AND RESTRICTIONS AND WATERSHED DEVELOPMENT PLANS

The Enforcement Officer shall be responsible for plan review, approval of the design of any stormwater control measure, related field inspections and other matters pertaining to the stormwater control measures required in Section 9-7-4 of this Ordinance.

(e) DEVIATION TO DIMENSIONAL REQUIREMENT

If the Enforcement Officer finds that any dimensional requirement in this Ordinance has not been specifically adhered to, but that such deviation was a result of a good faith error and that said error would not adversely impact an adjoining property, he may permit a dimension deviation up to and including one (1) foot. Only one (1) dimension deviation per building may be allowed.

(f) HISTORIC DISTRICT REQUIREMENTS

Subject to a Certificate of Appropriateness, the Enforcement Officer may issue permits for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places under the conditions set forth in Subsection 9-4-4(b) (Historic Districts).

(Ord. No. 07-50, (§ 5), 6-7-07)

9-9-10 MODIFICATIONS

(a) PURPOSE

Recognizing that it is sometimes possible to provide equal or better performance in furtherance of the purposes of this Ordinance through use of means other than those specified herein, the City Council finds it to be reasonably necessary and expedient that provisions be made for flexibility in administration of specified standards in this Ordinance.

(b) APPLICATION

Proposed modifications of certain standards as applied to particular developments are properly evaluated only in conjunction with technical review of a site plan, subdivision plat, or watershed development plan. The modifications being applied for shall be

portrayed on such plans and shall be approved, approved with conditions, or denied along with the approval or denial of such plans. To obtain approval of a modification, the burden shall be upon the developer or property owner to demonstrate that the alternate standards portrayed on the plan will yield equal or better performance in furtherance of the purposes of this Ordinance.

(c) APPROVAL BODY

Recognizing that the evaluation of proposed alternate means intended to offer equal or better performance normally requires technical expertise and is best accomplished in conjunction with review of development plans, the City Council hereby designates the Technical Review Committee to be the appropriate planning agency to approve modifications, except as otherwise provided in this Section.

(d) SECTIONS AFFECTED

The Technical Review Committee or, on appeal, the City Council may approve modifications to standards in the following Chapters, Sections, and Subsections:

- (1) Subsection 9-4-3(a)(3). Development Standards: Dimensions of the sight distance triangle (Subsection 9-4-3(a)(3)d.2.) and location of utilities within alleys (Subsection 9-4-3(a)(3)d.4.)
- (2) Subsection 9-4-3(b)(3)e. Dimensional Standards: Minimum street frontage for Open Space and maximum lot area for single-family detached dwellings (Table 4-3-1).
- (3) Subsection 9-4-3(b)(3)f. Parking and Access: Parking on a street side of building and vehicular access from street (Subsection 9-4-3(b)(3)f.4.)
- (4) Subsection 9-4-3(b)(5)b. Street Standards: Use of permanent cul-de-sac streets and T-turnarounds (Subsection 9-4-3(b)(5)b.3.), omitting an alley (Subsection 9-4-3(b)(5)b.6.), and widths of sidewalks, planting strips, street pavement, and private alley pavement (Subsection 9-4-3(b)(5)b.11.)
- (5) Subsection 9-4-3(b)(5)c. Block Length and Width: Longer blocks (Subsection 9-4-3(b)(5)c.1.)
- (6) Subsection 9-4-3(b)(5)d. Sidewalks: Width of sidewalks (Subsection 9-4-3(b)(5)d.1.) and sidewalks on both sides of the street (Subsection 9-4-3(b)(5)d.2.)
- (7) Subsection 9-4-3(b)(5)e. Utilities: Location of public water, storm and sewer (Subsection 9-4-3(b)(5)e.3.)
- (8) Subsection 9-4-3(b)(5)f. Landscaping and Street Trees: Planting strip width (Subsection 9-4-3(b)(5)f.1.)

- (9) Subsection 9-4-11(b): Minimum Rear Interior Setbacks and Minimum Building Separation (Table 4-11-4) and Open Space and/or Recreational Facilities (Subsection 9-4-11(b)(4)a.6.) where the yard space triangles as Subsection 9-4-11(b)(4)b.1. applies.
- (10) Subsection 9-4-11(b)(4): Additional Requirements for Multifamily Development
- (11) Subsection 9-4-16(b)(10): Access Through Unimproved Right-of-way
- (12) Subsection 9-5-2(bbbb)(2): General Requirements for Recreational Vehicle Parks
- (13) Subsection 9-5-2(bbbb)(3): Recreational Vehicle Park Regulations
- (14) Subsection 9-6-10: Owners' Associations
- (15) Subsection 9-6-16(a)(2): Development Name
- (16) Subsection 9-6-16(b): Lot Dimensions and Standards
- (17) Subsection 9-6-16(c)(4): Access to Adjoining Property
- (18) Subsection 9-6-16(c)(9): Street Intersections
- (19) Subsection 9-6-16(c)(10): Streets Crossing Natural Areas
- (20) Subsection 9-6-16(c)(11): Spacing Between Intersections
- (21) Subsection 9-6-16(c)(12): Cul-de-sac Maximum Length
- (22) Subsection 9-6-16(c)(13): Temporary Turnarounds
- (23) Section 9-6-16(c)(14): Grades at Intersections
- (24) Subsection 9-6-16(c)(15): Street Names
- (25) Subsection 9-6-16(d): Block Length
- (26) Subsection 9-6-16(e): Sidewalks
- (27) Subsection 9-6-16(f)(2): Water and Sewer Connections
- (28) Subsection 9-6-16(g): Drainage
- (29) Table 6-16-1: Public Street Design Standards
- (30) Table 6-16-2: Private Street Design Standards
- (31) Table 6-16-3: Private Street Design Standards For Recreational Vehicle Parks

- (32) Chapter 7: Environmental Regulations, Article A, Watershed Protection – Any provision of this Article with standards higher or more restrictive than the State EMC's rules not including permitted or prohibited land uses.

(e) WATERSHED MODIFICATIONS

Where the Technical Review Committee is authorized to grant modifications to Chapter 7, Article A, Watershed Protection, to accept an alternate means of accomplishing the purposes of this Ordinance, then such modifications shall only apply to provisions of this Ordinance that are more stringent than the State minimum watershed requirements. Where such requirements are State minimum requirements, then a departure from the requirements of this Ordinance shall only be considered per the requirements of Section 9-9-11, Watershed Variances.

(f) GROUNDS FOR MODIFICATION

In considering modifications, the Technical Review Committee shall determine that the modification request meets one or more of the following findings:

- (1) Equal or Better Performance: A finding by the Technical Review Committee that equal or better performance in furtherance of the purposes of this Ordinance will result from the alternate standards portrayed on the plan constitutes grounds for approval of a modification. The evaluation of performance shall be made with regard to one purpose in Section 9-1-3 (Purpose) if only one purpose is affected. If performance with regard to more than one purpose in Section 9-1-3 (Purpose) is affected, the evaluation shall be made with regard to overall performance in furtherance of the purposes of this Ordinance. If an alternate standard as portrayed on the plan reduces performance with regard to one or more Ordinance purposes but produces a concomitant and counterbalancing superiority of performance with regard to one or more other purposes, a modification may be approved.
- (2) Physical Constraints: A finding by the Technical Review Committee that the size, topography, or existing development of the property or of adjoining areas prevents conformance with a standard constitutes grounds for approval of a modification.
- (3) Other Constraints: A finding by the Technical Review Committee that a federal, state or local law or regulation prevents conformance with a standard constitutes grounds for approval of a modification.

(g) CONDITIONS

In approving a modification, the Technical Review Committee or City Council may prescribe such reasonable and appropriate conditions and safeguards as will assure that the use of the property will be compatible with surrounding properties, will not alter the essential character of the neighborhood, and will support the purposes of this Ordinance

being maintained. Violations of conditions and safeguards that are part of the terms of modification approval shall be deemed a violation of this Ordinance.

(h) APPEALS

Appeals may be made pursuant to Subsection 9-3-11 (e)(3) (Action by Technical Review Committee), Subsection 9-6-7(g) (Appeals) and Subsection 9-9-12(d) (City Council)

(i) DURATION

An approved modification is part of an approved plan and shall have the same duration as the plan approval.

(Ord. No. 93-87, § 1, 7-1-93, § 1; Ord. No. 93-113, Pt. 2(§ 1), 9-16-93; Ord. No. 93-113, Pt. 1(§ 1), 12-13-93; Ord. No. 94-81, § 1, 7-21-94; Ord. No. 97-67, § 1, 1997; Ord. No. 98-07, Pt. 6, § 1, 1-22-98; Ord. No. 99-83, Pt. 5, § 1, 11-4-99; Ord. No. 00-11, Pt. 2, (§ 1), 2-3-00; Ord. No. 00-48, Pt. 1, (§ 1), 5-18-00; Ord. No. 01-10, Pt. 6 (§1), 12-21-00; Dev. Ord. 01-14, Pt. 22, (§1), 4-5—01; Ord. No. 04-76, Pts. 7, 8 & 9, (§1) 10-21-04; Dev. Ord. 05-34, Pt. 2, §1, 4-21-05)

9-9-11 WATERSHED VARIANCES

(a) PURPOSE

Recognizing that it is sometimes evident that there are practical difficulties or unnecessary hardships in meeting the strict standards and requirements of this Ordinance, and that it is possible to provide appropriate relief in furtherance of the purposes and spirit of this Ordinance, the city council finds it to be reasonably necessary that provisions be made for major and minor variances to the watershed requirements.

(b) APPLICATION

Variances under this section apply to the standards and restrictions of Chapter 7, Article A (Watershed Protection). Proposed watershed variances of certain standards as applied to particular developments are properly evaluated only in conjunction with a watershed development plan. The variance being applied for shall be portrayed on such plan and shall be approved, approved with conditions, or denied along with the approval or denial of such plans. To obtain approval of a watershed variance, the Technical Review Committee or City Council shall make findings of fact as provided for in Section 9-9-11(c). To obtain approval, the burden shall be upon the developer or property owner to demonstrate such variance is warranted.

(c) MINOR VARIANCES

The Technical Review Committee shall review and decide requests for minor variances to the standards and restrictions pertaining to Watershed Protection. In order to approve

a requested minor variance, the Technical Review Committee shall make findings of fact showing that:

- (1) There are practical difficulties or unnecessary hardships that would prevent compliance with this Ordinance. Variance requests shall be evaluated in accordance with all of the following:
 - a. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
 - b. The hardship is due to the physical nature of the applicant's property, such as its size, shape or topography, such that compliance with the provisions of this Ordinance would not allow reasonable use of the property;
 - c. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
 - d. The hardship is rare or unique to the applicant's property;
 - e. If the applicant complies with the provisions of this Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, the applicant's property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Technical Review Committee shall consider whether the variance is the minimum possible deviation from the terms of this Ordinance that shall make reasonable use of the property possible;
- (2) The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
- (3) The granting of the variance assures the public safety and welfare and does substantial justice.

The Technical Review Committee may attach conditions to the minor variance approval that support the purpose of this Ordinance. In addition, in the case of water supply watersheds, the City shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the applicable designated watershed and the entity using the water supply for consumption where the minor variance is being considered.

(d) MAJOR VARIANCES

Requests for major variances to the standards and restrictions pertaining to Watershed Protection shall be to the N.C. Environmental Management Commission (EMC), following review and favorable recommendation by City Council and after review and recommendation by the Technical Review Committee in accordance with the procedure set forth in 9-9-11(c). The major variance request shall be forwarded to the EMC with a report containing the findings of fact for City Council's favorable recommendation,

conclusions of law, a recommended decision, recommended conditions and a record of the Council's hearing of the request. Requests for major variances that do not receive a favorable recommendation shall be deemed denied.

(e) ANNUAL REPORT OF WATERSHED VARIANCES

The Enforcement Officer shall keep a record of all watershed variances and this record shall be submitted each calendar year to the North Carolina Division of Water Quality in accordance with Section 9-7-10(d) (Watershed Variances).

(f) CONDITIONS

In approving a watershed variance, the Technical Review Committee or City Council may prescribe such reasonable and appropriate conditions and safeguards as will assure that the use of the property will be compatible with surrounding properties and will not alter the essential character of the neighborhood. Violations of conditions and safeguards that are part of the terms of a variance approval shall be deemed a violation of this Ordinance.

(g) APPEALS

Appeals may be pursuant to Subsection 9-9-12(d) (City Council).

(h) DURATION

An approved watershed variance is part of an approved plan and shall have the same duration as the plan approval.

9-9-12 APPEALS

(a) GENERAL

Unless otherwise provided, appeals of decisions, actions, orders, or interpretations of this Ordinance shall be:

- (1) In writing;
- (2) Filed within fifteen (15) days of the final decision; and
- (3) Filed with the Secretary of the Board or Commission to which the appeal is taken.

(b) TECHNICAL REVIEW COMMITTEE

Appeals from a decision of the Department of Planning and Development with regard to minor subdivisions and final plats are to the Technical Review Committee provided the appeal is made by the applicant within thirty (30) days of the decision.

(c) PLANNING AND ZONING COMMISSION

Appeals from a decision of the Enforcement Officer with regard to a soil erosion and sedimentation control plan are first to the Planning and Zoning Commission in accordance with Subsection 9-9-11(g).

(d) CITY COUNCIL

- (1) Appeals from a decision of the Technical Review Committee with regard to subdivisions, site plans, or watershed development plans shall be to the City Council provided the appeal is made by the applicant within thirty (30) days of the decision. Appeals from a decision of the Urban Forestry Committee with regard to tree planting, pruning or removal authorization shall be to the City Council provided the appeal is made by the applicant within thirty (30) days of the decision.
- (2) All relevant facts, information or other evidence that could have affected a decision of the Technical Review Committee or Urban Forestry Committee, shall first have been presented to or made available for consideration by the Committee prior to taking an appeal to City Council. The City Council may remand a case to the Technical Review Committee or Urban Forestry Committee for consideration of new information before ruling on an appeal.

(Ord. No. 04-76, Pts. 10 & 11, (§1), 10-21-04)

(e) BOARD OF ADJUSTMENT

- (1) Unless otherwise provided, the decision of an Enforcement Officer with regard to an interpretation of a zoning provision, of a minimum housing code provision, of a floodway or floodway fringe boundary, or of a zoning boundary shall be appealed to the Board of Adjustment.
- (2) Appeal from a decision of the Historic Preservation Commission with regard to a Certificate of Appropriateness shall be to the Board of Adjustment in the nature of certiorari.
- (3) Appeals from decisions of the Enforcement Officer regarding alternate methods of compliance for landscaping plans (Subsection 9-5-11(f)) shall be to the Board of Adjustment.

(f) JUDICIAL

Except as otherwise provided, an appeal from a decision of the City Council or the Board of Adjustment is to a court of competent jurisdiction.

(g) SOIL EROSION AND SEDIMENTATION CONTROL

- (1) Procedure: Except as provided in Subsection 9-8-6(e) (Appeals) of this Ordinance, the appeal of a disapproval or conditional approval of a soil erosion and sedimentation control plan shall be governed by the following provisions:
- a. Written Appeal: The disapproval or conditional approval of any proposed soil erosion and sedimentation control plan by the Enforcement Officer shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within fifteen (15) days after receipt of written notice of disapproval or conditional approval.
 - b. Timing: A hearing held pursuant to this Section shall be conducted by the Planning and Zoning Commission within thirty (30) days or at the next scheduled meeting after the date of the appeal or request for a hearing.
 - c. Recommendation: The Planning and Zoning Commission shall conduct a hearing and shall make a recommendation to the City Council within thirty (30) days after the date of the hearing on a soil erosion and sedimentation control plan.
 - d. Public Hearing: The City Council will render its final decision, on a soil erosion and sedimentation control plan upon which a hearing is requested, within fifteen (15) days after receipt of the Planning and Zoning Commission recommendation.
 - e. Appeal of City Council Denial: If the City Council upholds the disapproval or conditional approval of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the City Council's decision to the North Carolina Sedimentation Control Commission as provided in NCGS 113A-61(c) and Title 15 NCAC 4B.0018(b).
- (2) Direct Appeal to Sedimentation Control Commission: In the event that a soil erosion and sedimentation control plan is disapproved pursuant to Subsection 9-7-11(l)(8) (Grounds for Plan Disapproval) of this Ordinance, the applicant may appeal the City's disapproval of the plan pursuant to Subsection 9-7-11(l)(8) of this Ordinance directly to the NC Sedimentation Control Commission.

(Ord. No. 93-87, § 1, 7-1-93, § 1; Ord. No. 93-113, Pt. 2(§ 1), 9-16-93; Ord. No. 93-113, Pt. 1(§ 1), 12-13-93; Ord. No. 99-83, Pt. 6 & 7, § 1, 11-4-99; Dev. Ord. 05-101, Pt. 18, §1. 12-22-05)